

Research Update: Matrix Development Corporation aka Legend Homes

Home Owners/Buyers Focus (Publication Date: Dec 20, 2008)

Chapter 11 bankruptcy, District of Oregon

Matrix Development Corporation
 aka:Legend Homes
 aka:EIN: 93-0604342
 12755 SW 69th Avenue, Suite 100
 Portland, OR 97223
 Tax id: 93-0789516

Date	Event
06/10/08	Company files for Chapter 11 voluntary petition
06/19/08	Order authorizing company to sell real estate inventory in the ordinary course
07/01/08	Appointment of Creditors Committee
07/28/08	FountainCourt Homeowners' Association granted relief from stay to pursue claim against Company
10/13/08	Stonewater Homeowners' Association files motion for relief from stay to pursue claim against Company
10/17/08	Order determining extent of KeyBank's liens
11/11/08	KeyBank files notice of appeal in relation to 10/17 order
12/17/08	Company files motion to approve settlement with FountainCourt Homeowners' Association
12/17/08	Stipulated order for relief for Stonewater Homeowners' Association

Background and Summary of Latest Events

Matrix Development Corporation aka Legend Homes (the "Company") is an Oregon-based residential developer which filed for bankruptcy on June 10, 2008. Together with affiliates, it owned approximately

362.75 acres of raw land in four states (Oregon, California, Colorado and Washington), and 770 vacant lots, 97 completed residential units, and 30 homes under construction. As of December 31, 2007, the corporate group had approximately \$258 million in total assets and \$198 million in total liabilities on a consolidated basis. It also generated \$118 million in vertical sales revenue.

The Company's bankruptcy filing caused an automatic stay in two of the several lawsuits that the Company was faced with, including those by the Homeowners' Association ("HOA") of residential developments built by the Company. Since our last update on [Legend Homes](#), several developments have occurred which may affect the Company and HOA claimants in the bankruptcy. Specifically, this Research Update discusses the developments in the claims by FountainCourt and Stonewater HOAs.

Fountaincourt Homeowners' Associations Claims

In November 2007, the FountainCourt HOA ("FountainCourt") commenced a civil lawsuit against the Company and its affiliates on alleged construction defects at the Project, claiming damages in excess of \$7 million. When the Company went into bankruptcy, FountainCourt sought approval to lift the automatic stay to continue its claim against the developer.

Background

Construction of the FountainCourt buildings started in August 2002 and certificates of occupancy were issued between 2003 and 4. The condominium and townhome units in the development were sold between May 2003 and March 2005. In November 2006, FountainCourt sent Legend Homes a Notice of Defects alleging 12 construction defects. This was followed by a supplemental Notice of Defects alleging another 12 defects.

Alleged defects include: substantial water intrusion as a result of faulty workmanship, use of unsuitable and/or defective materials, improper installation, non-compliance with the plans approved for construction by the City and failure to comply with applicable building codes, industry standards and manufacturer's installation requirements. There were also allegations based on the developer's failure to establish adequate reserve accounts.

Recovery on Claims

FountainCourt's complaint alleged damages in an amount in excess of \$7,106,727, including:

1. \$5,906,727 to correct construction defects and deficiencies; and repair damages caused by such defects and deficiencies;
2. \$1,200,000 for contingencies, a performance bond, insurance, architectural and engineering fees, construction administration, building inspections, loss of use, relocation of persons and personal property, diminution in market value and stigma damages; and
3. Attorney fees.

In the settlement agreement inked on November 26, 2008, the parties reached a settlement to fully settle and compromise FountainCourt's claims. To such end, the Company and a certain affiliate would stipulate the entry of a limited judgment against them in favor of FountainCourt in the amount of \$8,807,853. This amount consists of FountainCourt's claimed damages less a 10% reduction for risk and uncertainty, plus costs of \$120,000 and a "one-third attorneys' fee on the foregoing amounts of \$2,201,798". Note that the level of the legal fees incurred by the HOA in this case.

In addition, Canal Indemnity Company (the insurer which issued a commercial general liability policy to Legend Homes et al) would pay FountainCourt \$975,000. Essentially, FountainCourt had managed to negotiate for 90% of the damages claimed, but the overall recovery is much lower (approximately 71%) owing to the out-of-pocket attorney fees incurred.

Stonewater Homeowners' Associations Claims

StoneWater HOA ("Stonewater") is an owner's association for The Stonewater at Orenco Station in Oregon. This is a development project with 99 buildings containing 344 units. Construction began in 2004 through 2007. Stonewater requested relief from the bankruptcy automatic stay in October 2008 to commence a lawsuit for pursuing claims against the Company and its affiliates and claims with respect to liability insurance arising from the construction and repair of the development. Claims include

negligence and nuisance as well as breach of the express warranties under the Oregon Condominium Act and breach of the implied warranties of habitability and reasonable workmanlike construction.

According to court documents, Stonewater alleged that the development project had been constructed in violation of several provisions in the 2004 Oregon Structural Specialty Code ("OSSC"). Example of specific defects identified with the buildings' enclosure systems include improperly lapped and integrated window flange installations, decks which drain into and behind the siding due to negative slope and inadequate edge flashing, improperly spaced terminations between cladding materials, improperly applied exterior cladding, improperly constructed sealant joints, and improper water shedding surface continuity from roof to cladding. In addition to compromising the surface materials, these violations of the OSSC may have compromised underlying systems such as the air barrier, laterally loaded structural gypsum and OSB sheathing, and fasteners.

Stonewater had also commissioned a report from an expert building enclosure firm which identified several instances of the above example defects and others in June 2007. The Company had since acknowledged these defects and began repairs recommended by the enclosure firm. However, these experts subsequently terminated their relationship due to the fact that "substandard repair methods are being implemented," and they no longer wanted to associate themselves with the project. In this context, Stonewater obtained a stipulated order for relief from stay on December 17, 2008.

Postscript added on Jan 8, 2009: Madison Heights COA filed an objection to the proposed settlement with FountainCourt on Jan 7. The basis of objection is that both cases alleged similar types of water intrusion-related construction defects and the claim was in excess of \$7 million as well, yet Madison Heights' claim was still unresolved and the FountainCourt settlement could effectively reduce the overall policy coverage available to the former as a subsequent judgment creditor. Our next [Research Update on Legend Homes](#) will touch on more details regarding this issue as well as the amount of available insurance proceeds for other HOAs with potential claims against Legend Homes.

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